

IN THE SUPREME COURT OF FLORIDA

Case No. SC2025-1325

In re: Petition for All Writs Relief Under Article V, § 3(b)(7)

Petitioner: Mario Mirabal

SUPPLEMENT TO ALL WRITS PETITION –

NOTICE OF POST-PETITION FILINGS AND CONTINUED
LITIGATION BY PLAINTIFF WHILE DISQUALIFICATION AND
DIVESTITURE REMAIN UNRESOLVED

Petitioner, Mario Mirabal, respectfully submits this Supplement to the pending All Writs Petition in Case No. SC2025-1325 to notify this Court of additional post-petition filings and material developments in 11th Judicial Circuit Case No. 2024-022769-CA-01 (Mirabal v. KP Investments Miami, LLC), the underlying trial court matter from which this constitutional request for relief arises.

BACKGROUND

On August 29, 2025, Petitioner filed a Motion to Disqualify Judge Ariana Fajardo Simon pursuant to Florida Rule of General Practice and Judicial Administration 2.330 (D.E. 105). As of the date of this filing, no subsequent orders have been entered by Judge Simon, and no ruling on the disqualification motion has been issued.

However, Plaintiff KP Investments Miami, LLC, represented by John Cunill, Esq., filed a substantive Response in Opposition to Defendant's Motion to Vacate and Notice of Unlicensed Practice of Law (D.E. 81), while knowingly seeking relief from a court that had already been divested of jurisdiction by federal removal (D.E. 44) and that is presided over by a judge whose disqualification is pending.

Petitioner filed a comprehensive Emergency Line-by-Line Reply in Further Support of Motion to Vacate Void Orders, which is attached hereto as Exhibit B. This Reply preserves all federal objections, reasserts the jurisdictional and disqualification defects already before this Court, and respectfully requests that the lower tribunal refrain from further action while appellate and constitutional issues remain unresolved.

To further support the seriousness of the jurisdictional and ethical irregularities, Petitioner also submits Exhibit C, a copy of his consolidated Rule 60(d)(3) Motion for Relief from Judgment Based on Fraud Upon the Court, filed in the United States Court of Appeals for the Eleventh Circuit (Case Nos. 25-10858, 25-10862, 25-11120). The motion outlines the systemic fraud involving fraudulent assignments, concealment of void foreclosure documents, and procedural abuse spanning state and federal courts. This motion is provided not for adjudication by this Court, but to assist in understanding the broader factual backdrop against which judicial disqualification and procedural manipulation in the lower court must be evaluated.

Exhibit D is provided not for adjudication, but to support this Court's understanding of how the post-closing 2010 assignment — used to justify foreclosure, specific performance, and the 2024 deed at issue — directly contravenes the contractual timing, delivery, and cure provisions set forth in the PSA. It further supports Petitioner's assertion that the trial court acted without jurisdiction and under a tainted factual record.

EXHIBITS

Exhibit A – Plaintiff's Response in Opposition to Defendant's Motion to Vacate and UPL Accusation (D.E. 81)

Exhibit B – Defendant's Emergency Reply in Further Support of Motion to Vacate Void Orders

Exhibit C – Petitioner's Consolidated Rule 60(d)(3) Motion (Eleventh Circuit Court of Appeals)

Exhibit D – Pooling & Servicing Agreement Violation & Inconsistency Index for the IndyMac INDX Mortgage Loan Trust 2007-AR5, which governs the alleged loan and securitization structure underlying this litigation

Petitioner respectfully submits this Supplement for the Court's awareness and consideration and reserves the right to file additional supplements if further post-petition actions occur while this Court retains jurisdiction under Article

V, § 3(b)(7) of the Florida Constitution.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W. 49th Street

Miami Beach, FL 33140

Email: solphax@gmail.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION

KP INVESTMENTS MIAMI, LLC,

CASE NO.: 2024-022769-CA-01

Plaintiff,

JUDGE.: SIMON

v.

MARIO MIRABAL,
Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
VACATE AND NOTICE OF UNLICENSED PRACTICE OF LAW**

NOW COMES, the Plaintiff, KP Investments Miami, LLC, by and through its undersigned counsel, John Cunill, Esq. of the Law Offices of Adorno & Cunill, P.L., and pursuant to the applicable Florida Rules of Civil Procedure, hereby files this Response in Opposition to Defendant's Motion to Vacate and Notice of Unlicensed Practice of Law, and in support thereof states as follows:

INTRODUCTION

The present action is an ejectment action where the Defendant, Mario Mirabal ("Mirabal"), refuse to vacate the property owned by the Plaintiff. Instead, Mirabal continues to misuse the judicial process to delay resolution at times making a mockery of our Judicial System and engaging in the unlicensed practice of law. Defendant has repeatedly disregarded court orders, including the most recent Court's Order compelling Mirabal's deposition, and now seeks to vacate proceedings by filing meritless and procedurally defective motions including numerous appeals to the 11th Federal Circuit

Court of Appeals and the Third District Court of Appeals. A chart of the recent appeals filed at the Third District Court of Appeals is set forth below:

Court	Case Number	Case Title	Classification	Docket Date	Status
3rd District Court of Appeal	3D2025-1487	Mario Mirabal v. KP Investments Miami, LLC	Original Proceedings - Circuit Civil - Prohibition	08/04/2025	Open
3rd District Court of Appeal	3D2025-1103	Mario Mirabal v. KP Investments Miami, LLC	Original Proceedings - Circuit Civil - Certiorari	06/09/2025	Closed
3rd District Court of Appeal	3D2025-0540	Mario Mirabal v. KP Investments Miami, LLC	NOA Final - Circuit Civil - Other	03/27/2025	Closed

DEFENDANT’S MOTION IS LEGALLY INSUFFICIENT

Defendant’s “Motion to Vacate” [D.E.80] is procedurally deficient, fails to state a cognizable basis under Fla. R. Civ. P. 1.540 or any other applicable rule, and consists of conclusory assertions unsupported by admissible evidence. The motion appears to rehash claims regarding title and alleged federal matters that have been previously raised and rejected. Florida law is clear that title to the subject property has already been conveyed to Plaintiff by a Warranty Deed which was recorded on November 25, 2024. Simply put, Defendant has no legal or equitable interest in the property. It is evident that Defendant’s filings are intended to delay the process, as evidenced by Mirabal’s blatant refusal to attend a properly noticed deposition that was ordered by this Court. Mirabal’s continued

disrespect of this Court's authority warrants denial of the motion and the imposition of sanctions.

DEFENDANT IS ENGAGING IN THE UNLICENSED PRACTICE OF LAW

On July 22, 2025, Mirabal filed the Defendant's Notice of Disqualification [D.E.68] which explicitly states that he is filing "pro se and as Attorney-in-Fact for co-defendant Ariana Birencwajg." Defendant is not a licensed attorney in the State of Florida or any jurisdiction. Florida law strictly prohibits a nonlawyer from representing another individual in court proceedings and it is generally understood that the performance of services in representing another before the courts is the practice of law. *See Florida Bar re Advisory Opinion*, 265 So. 3d 447 (Fla. 2018). Defendant's attempt to represent Ms. Birencwajg constitutes the unlicensed practice of law ("UPL"), which not only invalidates his filings on her behalf but also exposes him to potential referral to The Florida Bar for investigation and sanctions.

SANCTIONS ARE APPROPRIATE

Plaintiff has already been forced to move for sanctions under Fla. R. Civ. P. 1.380 due to Defendant's willful non-appearance at his deposition. Defendant's Motion to Vacate and related filings only compound his abuse of process. Plaintiff respectfully requests that the Court:

- a. Deny Defendant's Motion to Vacate in its entirety;
- b. Strike all filings made by Defendant on behalf of any third party as unauthorized and constituting UPL;
- c. Refer Defendant's conduct to The Florida Bar for investigation into the unlicensed practice of law;

- d. Award Plaintiff further sanctions, including attorney's fees and costs, for Defendant's continued abuse of the judicial process.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter an Order denying Defendant's Motion to Vacate, striking Defendant's improper filings, imposing sanctions as appropriate, and granting such further relief as the Court deems just and proper.

WHEREFORE, Plaintiff, KP Investments Miami, LLC, respectfully requests that this Honorable Court enter an Order:

1. Denying Defendant's Motion to Vacate in its entirety;
2. Striking all filings submitted by Defendant on behalf of any third party as unauthorized and constituting the unlicensed practice of law;
3. Referring Defendant's conduct to The Florida Bar for investigation into the unlicensed practice of law;
4. Awarding Plaintiff its reasonable attorney's fees and costs incurred in responding to Defendant's improper filings; and
5. Granting such other and further relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2025, a true and correct copy was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

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EXHIBIT B

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
Case No. 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,
Plaintiff,

v.

MARIO MIRABAL,
Defendant.

_____ /

DEFENDANT’S LINE-BY-LINE REPLY IN FURTHER SUPPORT OF
MOTION TO VACATE (VOID ORDERS), TO RECOGNIZE FEDERAL
DIVESTITURE, AND TO DENY PLAINTIFF’S SANCTIONS/
UNLICENSED PRACTICE OF LAW ACCUSATIONS AND
MISCHARACTERIZATIONS

PRELIMINARY STATEMENT I

The Fraud and Title Deception Narrative

The deed Plaintiff relies on is the very one Defendant challenges. Plaintiff's exhibit reflects a Special Magistrate deed "for Mario Mirabal" recorded on November 25, 2024 for \$10, tied to the earlier specific-performance case. That instrument is the subject of Defendant's fraudulent-conveyance challenge across state, bankruptcy, and federal filings.

Plaintiff, as part of the fraud perpetuated upon both Mr. Mirabal and the courts of this state and the United States, now asks the Court to believe that Mr. Mirabal — the legitimate homestead owner and party to a \$1.3 million contract with Carlos Perez / KP Investments — somehow conveyed his property for \$10. This is despite the existence of a settlement agreement between Mr. Mirabal and Deutsche Bank, in which Deutsche Bank accepted a \$590,000 payoff in full resolution of the foreclosure dispute, prior to Mirabal learning that the assignment relied upon by Deutsche Bank was fraudulent.

That assignment was forged by the now-disbarred David J. Stern law office, purporting to transfer the note and mortgage from IndyMac Bank to Deutsche Bank in 2010—more than two years after IndyMac ceased to exist. The transfer directly violated the Pooling and Servicing Agreement (PSA) governing the IndyMac INDX 2007-AR5 trust, in which Deutsche Bank served only as trustee, with no authority to foreclose or retain recoveries. All obligations were already satisfied through FDIC resolution in 2008.

In essence, Plaintiff asks this Court to believe that Mr. Mirabal—who had contracted to sell the property for \$1.3 million, and had settled the underlying loan for \$590,000—voluntarily transferred a \$2 million homestead for \$10. Even setting aside the forged assignment, Plaintiff's position suggests Mr. Mirabal relinquished over \$700,000 in equity without cause or compensation.

Plaintiff falsely represents Mr. Mirabal as a mere occupant of “KP’s property,” when in fact KP never held lawful title. The deed was recorded amid active state and federal proceedings, including after Deutsche Bank’s foreclosure had been dismissed with prejudice by Judge Bokor in 2020, a ruling Deutsche Bank never disclosed when KP pursued specific performance, in organized collusion to defraud Mr. Mirabal and the courts. .

These unresolved fraud and title issues remain active in:

The unadjudicated Rule 1.540(b) motion (Judge Miller / Judge Dimitris),

The unadjudicated Rule 1.540(b) motion (Judge Brinkley /Judge Enriquez),

The pending Rule 1.540(d) motion (Judge Enriquez),

Two unadjudicated federal adversary complaints (Bankruptcy Court) Now before (Eleventh Circuit),

The consolidated Rule 60(d)(3) fraud motion (Eleventh Circuit),

The All Writs Petition before the Florida Supreme Court (SC2025-1325).

The scope of coordinated fraud and concealment by KP Investments and its counsel, John Cunill, Kenneth Damas, and counsel for Deutsche Bank, merits the attention of both the FBI, the U.S. Department of Justice, and national media. A careful review of the record reveals that across every forum —

state, federal, bankruptcy, and appellate — the same pattern repeats: procedural abuse, forum manipulation, and the manufacture of title through deception.

PRELIMINARY STATEMENT II

Jurisdictional Defect and Judicial Disqualification

Federal divestiture. Defendant noticed removal and federal proceedings in April 2025. Under 28 U.S.C. § 1446(d), the state court “shall proceed no further” upon notice. Defendant’s Florida Supreme Court All-Writs petition places this Court on record notice that jurisdiction was divested in March/April 2025, and that any orders thereafter are ultra vires. The petition’s exhibit index identifies:

“Exhibit E: Defendant’s Notice of Federal Jurisdiction (April 2025)”

“Exhibit F: Notice of pending Eleventh Circuit Rule 60(d)(3) fraud motions”

— both of which Plaintiff’s Response disregards.

Disqualification. The same petition documents that Chief Judge Orshan was deemed recused in July 2025 and that Judge Simon was the subject of a timely disqualification motion in late August 2025. Nonetheless, both judges continued to act while disqualification and federal divestiture were in effect. The petition expressly requests recognition that “orders entered after these notices are ultra vires” and seeks a stay pending resolution of the federal

appeals and the Rule 1.540(d) motion before Judge Enriquez.

Scope of this Reply

Even setting divestiture and disqualification aside, Plaintiff's Response rests on misstatements of law and fact. The record shows:

- (a) Defendant's property interest by 2009 quitclaim deed;
- (b) disputed/tainted title arising from a special-magistrate deed recorded 11/25/2024;
- (c) pending federal Rule 60(d)(3) fraud appeals;
- (d) proper jurisdictional objections and notices of non-appearance post-removal; and
- (e) that the "UPL" accusation is a red herring—and in any event moot based on Defendant's clarified, exclusive pro se status.

I. Line-by-Line Reply to Plaintiff's "Introduction"

Plaintiff: "The present action is an ejectment action where the Defendant, Mario Mirabal ('Mirabal'), refuse to vacate the property owned by the Plaintiff."

Reply: The "ownership" premise is contested and presently under federal appellate and Rule 60(d)(3) fraud review. Plaintiff's own Chain-of-Title letter concedes the property first passed to Mirabal (2009 Quitclaim), and only later by special-magistrate deed recorded 11/25/2024 to KP—an instrument Defendant challenges as void for fraud and procedural violations.

See also Defendant's motions in the Miller/Dimitris matter identifying the same conveyance (CFN 20240890446, Book 34509, Page 3025) as the product of collusion and stay violations.

Plaintiff: "Mirabal continues to misuse the judicial process to delay resolution at times making a mockery of our Judicial System and engaging in the unlicensed practice of law."

Reply: The federal filings are not "misuse"; they are mandated safeguards after removal and before Eleventh Circuit fraud appeals. The Florida Supreme Court petition catalogs those notices and argues federal divestiture; Plaintiff omits them. It is in fact, counsel for KP and Deutsche Bank that have made a mockery of our Judicial System.

As for UPL, see § III below—Plaintiff quotes a single "attorney-in-fact" reference in a notice; Defendant does not represent any other party in this case and appears pro se for himself, as reflected throughout the filings (including the Supreme Court petition's signature block).

Plaintiff: "Defendant has repeatedly disregarded court orders, including the most recent Court's Order compelling Mirabal's deposition..."

Reply: Defendant timely filed objections and notices that post-removal discovery is barred and that the Court's power was divested; he also set and requested hearings on these objections. See Request for Hearing on Defendant's Objection to Notice of Deposition and Notice of Barred Proceedings under Federal Supremacy and Rule 60(d)(3), and Constitutional Objection and Notice of Non-Appearance Due to Lack of Jurisdiction.

The later order compelling a date/time—procured by Plaintiff—cannot cure the threshold jurisdictional defect and is itself void if entered after removal and/or by a disqualified judge.

Plaintiff: “...and now seeks to vacate proceedings by filing meritless and procedurally defective motions including numerous appeals to the 11th Federal Circuit Court of Appeals and the Third District Court of Appeals.”

Reply: The Eleventh Circuit filings include a consolidated Rule 60(d)(3) fraud motion supported by sworn contradictions in Deutsche Bank’s proof of claim and state filings. Those contradictions are detailed at length and are anything but “meritless.”

Defendant also filed a Notice of Federal Appeal to the Eleventh Circuit and Notice of Stay Pending Appeal, both served in this ejectment action—again ignored by Plaintiff.

II. “Defendant’s Motion is Legally Insufficient” — point-by-point

Plaintiff: “Defendant’s Motion relies on conclusory assertions and fails to state a cognizable basis for vacatur under Florida law.”

Reply: The Motion sets out two independent cognizable bases: (1) voidness

for lack of jurisdiction post-removal and after disqualification (all orders entered thereafter are ultra vires); and (2) fraud-tainted title and fraud upon the court now under Eleventh Circuit review. The Florida Supreme Court petition presents both jurisdictions defects and seeks a stay; the Eleventh Circuit motion catalogs the evidentiary conflicts and false statements.

Plaintiff: “Florida law is clear that title to the subject property has already been conveyed to Plaintiff by a Warranty Deed which was recorded on November 25, 2024.”

Reply: The fact of recordation is not in dispute; its validity is. The 11/25/2024 Special-Magistrate Warranty Deed (CFN 20240890446; Book 34509; Page 3025) was executed while material disputes and stays were pending, without notice to Defendant, and amid the very fraud issues now before the Eleventh Circuit. Defendant moved in the Miller/Dimitris action to invalidate that conveyance for fraud and collusion.

In addition, Plaintiff’s own Chain-of-Title letter acknowledges Defendant’s prior 2009 Quitclaim Deed interest.

Plaintiff: “Simply put, Defendant has no legal or equitable interest in the property.”

Reply: The record shows the opposite: 2009 Quitclaim Deed to Mirabal (OR Book 26948, Page 1614) and continuous homestead possession.

Plaintiff's ejectment complaint itself pleads the chain that begins with Ariana's deed to Mirabal before the disputed 2024 deed to KP.

Whether KP took derivative, tainted title from a fraudulent post-judgment process is the live controversy—not a foregone conclusion. See also Defendant's motions itemizing violations (fraudulent transfer; improper notice; unresolved encumbrances).

III. "Unlicensed Practice of Law" — mischaracterization and mootness

Plaintiff: "On July 22, 2025, Mirabal filed the Defendant's Notice of Disqualification [D.E. 68] which explicitly states that he is filing 'pro se and as Attorney-in-Fact for co-defendant Ariana Birencwajg.' ... constitutes the unlicensed practice of law ('UPL')."

Reply:

No representation of others in pleadings. Defendant has consistently appeared pro se on his own claims and defenses. The cited notice's descriptive reference to "attorney-in-fact" reflected chain-of-title background (Ariana's earlier conveyance to Defendant and POA to Mr. Mirabal; later bank/servicer reliance on a POA instrument) and not an attempt to litigate for Ariana. See, e.g., the Supreme Court petition signature block: "Mario Mirabal, Pro Se."

Mootness/curative relief. To the extent Plaintiff contends a single phrase could be misconstrued, Defendant disclaims any representation of any co-party and requests the Court to treat any "attorney-in-fact" phrasing as surplusage or stricken. The underlying issues (federal divestiture; fraud upon

the court) stand on Defendant's own property interest and filings.

UPL as a distraction. Plaintiff's Response invokes UPL to avoid addressing the fraud-tainted assignment chain, and KP's advance knowledge of litigation risks reflected in the Perez deposition and title documents.

IV. "Sanctions are appropriate" — no willful violation; proceedings were divested/stayed

Plaintiff: "Plaintiff has already been forced to move for sanctions under Fla. R. Civ. P. 1.380 due to Defendant's willful non-appearance at his deposition."

Reply: Defendant served jurisdictional objections and a notice of non-appearance specifically because, after removal and with federal appeals pending, discovery in state court was barred. He also sought a hearing on those objections.

Plaintiff then obtained an order to compel a date/time—but that order was entered post-divestiture and amid the disqualification posture documented in the Supreme Court petition; it is void and cannot support sanctions.

V. Record-Based Rebuttals to Additional Assertions

“Rightful owner” theme. Plaintiff’s ejectment complaint predicates “rightful owner” on the 11/25/2024 special-magistrate deed; yet Plaintiff’s own exhibits show the chain passing through Mirabal’s 2009 deed and then the magistrate deed produced during contested litigation.

The warranty deed itself confirms the grantor is the Special Magistrate “for Mario Mirabal”—underscoring that KP’s title is derivative of a process Defendant challenges as void.

Knowledge and good faith. The Perez deposition and title subpoenas show KP and counsel were aware of active litigation and payoff/title issues before and during contracting/litigation.

The Eleventh Circuit motion compiles these conflicts (e.g., verified claims of clean title versus sworn admissions of known defects and lost note).

Appeals chart. Plaintiff’s “chart” in the Response is selective and omits the Eleventh Circuit filings and notices already served in this case (Notice of Federal Appeal; Notice of Stay Pending Appeal; Notice of Federal Proceedings).

The Florida Supreme Court petition likewise catalogs the April 2025 federal notices and seeks recognition that post-removal orders are void.

VI. Relief Requested

For the reasons above and those in Defendant's underlying motion, Defendant respectfully requests that the Court:

Recognize federal divestiture under 28 U.S.C. § 1446(d) as noticed in April 2025, and hold that all orders entered thereafter in this action are void; alternatively, stay/abate all proceedings pending resolution of Defendant's Eleventh Circuit appeals and Rule 60(d)(3) fraud proceedings.

Deny Plaintiff's Response and any request for sanctions, because (a) any orders compelling discovery were ultra vires and (b) Defendant served timely notices/objections of divestiture and non-appearance.

Reject/Moot the UPL accusation; to the extent a single notice's "attorney-in-fact" phrasing could be misconstrued, treat it as surplusage or stricken. Defendant proceeds pro se solely on his own behalf.

In the alternative If, upon review of this record, the Court recognizes the pattern of fraud perpetrated upon it, Defendant respectfully requests that the Court consider formal referral of this matter for scrutiny by the United States Department of Justice. Such referral would pertain to the conduct of Carlos Perez / KP Investments Miami LLC, his counsel John Cunill, for their roles in executing and concealing fraud on this Court and others in state and federal proceedings

Grant such other and further relief as is just.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W. 49th Street, Miami Beach, FL 33140

Email: solphax@gmail.com

Certificate of Service. I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via the Florida Courts E-Filing Portal and served on all counsel of record on 9.5.2025.

EXHIBIT C



CLERK COVER LETTER – Appeal No. 25-11254 -F

(Mandamus – FCA Docket and Procedural Integrity)

Re: Rule 60(d)(3) Motion for Relief from Judgment Based on Fraud Upon the Court

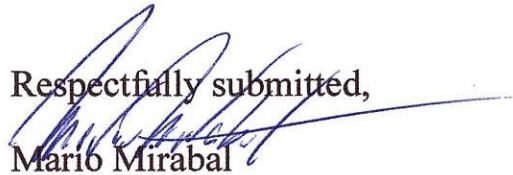
(Related Appeals: 25-10858, 25-10862, 25-11120, 25-11182, 25-11183)

Dear Clerk of Court:

Enclosed for filing in the above-captioned appeal is Appellant's Motion for Relief from Judgment Under Rule 60(d)(3), supported by Appendices A through E and documentary evidence of systemic fraud.

Please file this motion in connection with Appeal No. 25-10858 and update the docket accordingly. A Certificate of Service is enclosed.

Respectfully submitted,


Mario Mirabal

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT

Appeal No. 25-11254 *P*

In re: Mario Mirabal,

Petitioner.



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- VII. Conclusion

APPENDICES

- Appendix A – Forensic Evidence Record: 83 Verified Fraudulent Statements and Responses
- Appendix D – Proof of Claim Contradiction Index (Deutsche Bank Bankruptcy Filings)
- Complaint vs. Deposition Conflict Index – KP Specific Performance (2022 Case)
- Complaint vs. Deposition Conflict Index – KP Ejectment (2024 Case)
- Appendix E – Index of All Related Cases Affected by Fraud
- C.I.P. list
- Certificate of Service
- Clerk Cover Letter
- Court Cover Page

**MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(d)(3)
BASED ON FRAUD UPON THE COURT**

**UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**

Mario Mirabal

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

Date: May 13, 2025

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 60(d)(3), Appellant Mario Mirabal respectfully moves this Court to vacate and nullify all rulings, orders, and judgments in the consolidated actions and underlying proceedings listed herein, on the basis of fraud upon the court perpetrated by Deutsche Bank National Trust Company and KP Investments Miami, LLC, acting jointly and severally.

This Court has inherent equitable authority to act where fraud undermines the integrity of judicial proceedings. The relief sought here is necessary to:

Vacate foreclosure and post-foreclosure judgments that were obtained through fabricated documents and false testimony;

Nullify a fraudulent proof of claim and all litigation derived from it;

Prevent future abuse of the courts based on the same fraudulent chain of title;

Restore Appellant's right to judicial integrity, due process, and a lawfully recognized homestead.

II. INCORPORATION OF PRIOR RECORD AND NOTICE

This Motion incorporates by reference the Supplemental Request for Judicial Notice and Reservation of Rights Re: Fraud Upon the Court and Systemic Procedural Misconduct, previously filed in these consolidated appeals. That submission included Appendix A, cataloguing 83 instances of procedural and evidentiary fraud across related state, federal, and bankruptcy forums.

Appellant now supplements that record with additional forensic materials:

Appendix A, cataloguing 83 instances of procedural and evidentiary fraud across related state, federal, and bankruptcy forums

Appendix D: Proof of Claim Contradiction Index – 20 material falsehoods submitted by Deutsche Bank in bankruptcy court.

Complaint vs. Deposition Conflict Indices (Specific Performance and

Ejectment) – exposing KP’s perjury and coordinated misrepresentation with Deutsche Bank.

Appendix E: Index of All Related Cases Infected by Fraud.

These materials collectively demonstrate an interlocked scheme by Appellees to fabricate standing, suppress litigation records, forum-shop across jurisdictions, and deprive Appellant of property rights through fraud and concealment.

III. LEGAL STANDARD UNDER RULE 60(d)(3)

Rule 60(d)(3) authorizes federal courts to vacate judgments obtained by “fraud upon the court.” This includes:

Perjury;

Fabrication of evidence;

Concealment of material facts;

Use of void or forged documents;

Conduct that “defiles the court itself” and undermines the judicial process.

See:

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944);

Rozier v. Ford Motor Co., 573 F.2d 1332 (5th Cir. 1978) (binding in 11th Cir.);

Travelers Indem. Co. v. Gore, 761 F.2d 1549 (11th Cir. 1985);

United States v. Estate of Stonehill, 660 F.3d 415 (9th Cir. 2011);

Wilkins v. United States, 2020 WL 6263982 (11th Cir.) (unpublished).

Fraud upon the court may be addressed at any time and is not constrained by normal rules of finality or laches. The Court may act sua sponte, and relief is appropriate where fraud threatens the court's legitimacy, not merely the outcome of a specific case.

IV. SUMMARY OF FRAUD ACROSS COURTS

Deutsche Bank and KP Investments executed a multi-forum scheme that spanned:

State Foreclosure Action

Case No. 2018-018704-CA-01 (11th Judicial Circuit, Miami-Dade)

Filed a foreclosure without possession of the Note;

Claimed ownership based on assignments made after the assignor
(IndyMac) ceased to exist;

Later admitted the Note was lost, contradicting sworn affidavits.

Specific Performance Suit (KP)

Case No. 2022-004706-CA-01

KP claimed good-faith purchase based on foreclosure;

Carlos Perez admitted under oath that KP knew the foreclosure was
contested and defective;

Complaint directly contradicted deposition testimony.

Ejectment Suit (KP)

Case No. 2024-022769-CA-01

KP falsely claimed there was no pending litigation;

Deposition testimony confirmed full knowledge of ongoing litigation;
appeals and removals;

KP withheld these facts from the court to obtain possession.

Federal Bankruptcy Proceedings

Case No. 23-20131-CLC / Adv. No. 24-01418-CLC

Deutsche Bank filed a 100+ page Proof of Claim riddled with falsehoods:

Claiming to possess the Note (contradicted by Entry #145);

Claiming no pending litigation (when federal appeals were underway);

Claiming valid assignments from a defunct entity.

Federal District Court

Case No. 1:25-cv-20746-JEM (removed foreclosure)

Case No. 1:25-cv-20010-PCH (False Claims Act filing, under seal)

Federal Appellate Jurisdiction

**Appeal Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183,
25-11254**

V. INTEGRATED FRAUD INDICES: APPENDICES A, D, E, F

Appendix A:

**Forensic Evidence Record: 83 Verified Fraudulent Statements and
Responses 2028-2025**

Appendix D:

**Details 20 contradictions between Deutsche Bank's Proof of Claim and
prior sworn foreclosure filings. Includes:**

False possession of Note;

Forged assignments;

Misstatements of pending litigation;

Fabricated payment records.

Deposition Conflict Index: Specific Performance

(Case No. 2022-004706-CA-01)

Carlos Perez admitted pre-suit coordination with Deutsche Bank and full knowledge of ongoing legal conflict.

Deposition Conflict Index: Ejectment

(Case No. 2024-022769-CA-01)

KP claimed foreclosure was final and uncontested;

Deposition testimony and federal docket confirm the opposite.

Appendix E: Case Index

(A complete list of all cases affected by the fraud is attached.)

VI. REQUEST FOR GLOBAL RELIEF

In light of the overwhelming record of fraud — across state, federal, and bankruptcy forums — Appellant respectfully requests that this Court:

VACATE all judgments and orders in the following cases as infected by fraud:

2018-018704-CA-01 (State Foreclosure)

2022-004706-CA-01 (Specific Performance)

2024-022769-CA-01 (Ejectment)

23-20131-CLC (Bankruptcy)

24-01418-CLC (Bankruptcy Adversary)

1:25-cv-20746-JEM (Federal Removal Case)

All consolidated appeals now before this Court

NULLIFY the foreclosure judgment and related public record recordings (e.g., CFNs 20240890448, 20250155101), as tainted instruments used in furtherance of fraud.

ISSUE A DECLARATORY FINDING that Deutsche Bank lacks standing and that its claims to the property were based on fraudulent instruments and misrepresentations.

BAR FUTURE LITIGATION against Appellant's homestead by Deutsche Bank, KP Investments, PHH Mortgage or any party deriving interest from the voided foreclosure.

**REFER THIS RECORD to the U.S. Department of Justice and Federal
Bureau of Investigation for further action under:**

18 U.S.C. § 1001 (false statements);

18 U.S.C. § 152 (bankruptcy fraud);

18 U.S.C. § 1341 (fraud);

Florida Statutes § 817.535 (fraudulent filings);

Florida RICO Act, § 772.103.

**PRESERVE APPELLATE JURISDICTION over all related actions until
final determination and enforcement of relief.**

VII. CONCLUSION

This Court now holds the full record.

**Appellant has demonstrated, with verified documentary and testimonial
evidence, a long-running scheme by Deutsche Bank and KP Investments to
defraud multiple courts, manipulate judicial process, and wrongfully deprive
a citizen of his home through false filings and coordinated
misrepresentations.**

This is not merely a dispute. It is a coordinated assault on judicial integrity.

Rule 60(d)(3) provides the remedy — and the moment to restore faith in the rule of law.

Appellant further confirms that, in parallel with this motion, copies of the supporting record — including this filing and the previously submitted Judicial Notice with Appendix A — have been transmitted to the United States Department of Justice and the Federal Bureau of Investigation for independent review, consistent with public integrity oversight.

Respectfully submitted,

May 13, 2025

A handwritten signature in blue ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

APPENDIX A: FULL FORENSIC EVIDENCE RECORD

83 Quotes + Responses Categorized by Fraud Type

Each Entry Includes:

Exact Quote

Source Citation (Docket Entry, Date, Case No.)

Direct Forensic Response

DEUTSCHE BANK FORECLOSURE FRAUD

Quote #1

"Plaintiff is the holder and owner of the Note and Mortgage."

(Source: Verified Complaint for Foreclosure, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. Deutsche Bank did not possess the Note. Later filings revealed it had been lost, contradicting the foundational claim of ownership.

Quote #2

"The Plaintiff is in possession of the original, executed Note."

(Source: Affidavit in Support of Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Plaintiff later filed Entry #145, admitting the original Note and Mortgage were lost, proving the affidavit was materially false.

Quote #3

"The endorsement on the Note reflects lawful transfer of ownership to

Deutsche Bank National Trust Company, as Trustee."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. The chain of title was defective. Later filings confirmed that the alleged transfer was not properly executed or supported by FDIC receivership data.

Quote #4

"There is no genuine issue of material fact as to Plaintiff's standing to foreclose."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Standing was based on possession of original documents later admitted to be lost. Deutsche Bank could not lawfully proceed.

Quote #5

"All conditions precedent to the foreclosure have been satisfied, including proper endorsement and delivery of the Note."

(Source: Motion for Summary Judgment, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Deutsche Bank never had possession or a complete chain of endorsements. Foreclosure was obtained by misrepresentation.

Quote #6

"Due to an inadvertent misplacement by prior counsel, the original Note and Mortgage cannot be produced."

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. This admission contradicts years of sworn claims under oath that the Note was in possession. It exposes fraud retroactively.

Quote #7

"Substitution of certified copies will not impact the validity of Plaintiff's foreclosure judgment."

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. The foreclosure was granted based on false representations. Substitution cannot legitimize fraudulently obtained judgments.

Quote #8

"Plaintiff remains entitled to enforce the judgment regardless of physical possession of original instruments."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Enforcement requires the original note under Florida law. This is a material misrepresentation of legal entitlement.

Quote #9

"Plaintiff's standing was established at the time of filing, and subsequent issues with document custody do not affect standing."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Standing must exist at the inception of the case and cannot

be retroactively cured. This is a clear legal falsehood.

Quote #10

"Certified copies are sufficient to maintain enforcement of the foreclosure judgment."

(Source: Motion to Substitute, Entry #145, 03/18/2025)

Response: False. Certified copies cannot substitute original instruments in a contested foreclosure when authenticity is at issue.

Quote #11

"The note has been endorsed in blank and transferred to Plaintiff."

(Source: Summary Judgment Filing, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. Later filings confirm the Note was lost, undermining all representations of physical possession or endorsement.

Quote #12

"There is no challenge to Plaintiff's entitlement to enforce the loan documents."

(Source: Summary Judgment Hearing Memo, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. Defendant filed Rule 1.540(b) motions and raised standing challenges. Statement was intended to suppress pending objections.

Quote #13

"All factual allegations in the complaint are admitted due to lack of answer."

(Source: Motion for Final Judgment, Entry #79, 05/12/2022, Case No.
2018-018704-CA-01)

Response: False. Defendant had raised defenses and later filed substantive challenges. The court was misled as to the procedural posture.

Quote #14

"Deutsche Bank has standing based on possession and a complete chain of title."

(Source: Final Judgment Submission, Entry #79, 05/12/2022, Case No.
2018-018704-CA-01)

Response: False. No complete assignment chain was produced. Subsequent filings confirmed the original note was never actually possessed.

Quote #15

"There are no pending challenges to Plaintiff's foreclosure rights."

(Source: Motion to Substitute Note, Entry #145, 03/18/2025, Case No.
2018-018704-CA-01)

Response: False. Federal appeals, bankruptcy adversary complaints, and Rule 1.540(b) motions were pending. Statement concealed litigation risk.

KP INVESTMENTS – SPECIFIC PERFORMANCE FRAUD

Quote #16

"Plaintiff is the lawful successor in interest to the subject property based on a final foreclosure judgment."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022, Case

No. 2022-004706-CA-01)

Response: False. The foreclosure judgment was under contest in federal and bankruptcy court and was based on known falsehoods.

Quote #17

"There is no pending challenge to the foreclosure judgment or to Plaintiff's entitlement to title."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP filed knowing full well that federal removal and appeals were pending. This statement concealed active litigation.

Quote #18

"The title acquired by Plaintiff is free of any cloud or encumbrance disputing Plaintiff's right to ownership."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. Title was clouded by procedural fraud, void assignments, and adversary claims in bankruptcy and federal court.

Quote #19

"At the time of entering into the purchase agreement, Plaintiff was unaware of any pending litigation contesting title."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. Carlos Perez's deposition reveals KP's full knowledge of ongoing litigation with Deutsche Bank's assistance.

Quote #20

"Plaintiff had no reason to believe that Deutsche Bank's foreclosure judgment was defective or subject to appeal."

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP's attorney discussed the risk with Deutsche Bank counsel and knew the judgment was compromised.

Quote #21

"There are no legal impediments to specific performance under the terms of the parties' agreement."

(Source: Motion for Summary Judgment, Entry #41, 10/19/2022)

Response: False. Legal impediments included ongoing appeals, adversary complaints, bankruptcy stay, and a void underlying title.

Quote #22

"No genuine dispute exists as to Plaintiff's entitlement to enforce the purchase contract and acquire title."

(Source: Motion for Summary Judgment, Entry #41, 10/19/2022)

Response: False. The contract was void ab initio due to fraudulent premise — based on title KP knew was acquired through misrepresentation.

Quote #23

"Defendant failed to raise any valid defense to Plaintiff's claims."

(Source: KP Reply to Opposition, Entry #42, 11/01/2022)

Response: False. Defendant had raised federal preemption, due process,

standing, and fraud-based objections on multiple records.

Quote #24

"Plaintiff's title is not impacted by any bankruptcy filings."

(Source: KP Motion, Entry #43, 12/01/2022)

Response: False. KP had been named in adversary proceedings in bankruptcy court and was aware of the automatic stay under 11 U.S.C. § 362(a).

Quote #25

"The contract for purchase and sale was negotiated at arm's length with no knowledge of title irregularities."

(Source: KP MSJ Brief, Entry #41, 10/19/2022)

Response: False. KP coordinated with Deutsche Bank's counsel before the lawsuit was filed. Carlos Perez admitted this under oath.

KP INVESTMENTS – EJECTMENT FRAUD

Quote #26

"Plaintiff is the lawful owner of the property pursuant to an uncontested foreclosure judgment."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. The foreclosure judgment was actively contested in federal court and under appeal. KP's claim was materially false.

Quote #27

"Defendant's continued occupation of the property is without legal right or authority."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024)

Response: False. Defendant held legal possession under color of title while litigation was pending. KP attempted illegal dispossession.

Quote #28

"The foreclosure judgment upon which Plaintiff's title is based has not been appealed or vacated."

(Source: Complaint for Ejectment, Entry #1, 02/12/2024)

Response: False. KP omitted the existence of federal removal, adversary complaints, and pending motions for relief from judgment.

Quote #29

"There are no pending legal proceedings affecting Plaintiff's ownership rights."

(Source: Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. Numerous proceedings were pending in federal district and appellate courts, as well as bankruptcy.

Quote #30

"Plaintiff is entitled to immediate possession as a matter of law, without

further defense available to Defendant."

(Source: Motion for Summary Judgment, Entry #16, 04/12/2025)

Response: False. Defendant's rights were protected by ongoing appeals, bankruptcy protections, and disputes over void title.

Quote #31

"Defendant was properly served and has failed to appear."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. Defendant had filed multiple responsive pleadings and was actively litigating in related federal and appellate forums.

Quote #32

"There is no active litigation that could affect the validity of Plaintiff's claim to possession."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025)

Response: False. At the time of filing, multiple appellate and bankruptcy proceedings were pending — KP's statement was knowingly false.

Quote #33

"Plaintiff's interest is not subject to any conflicting claim."

(Source: KP Complaint, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. Defendant had recorded instruments of title, was party to adversary complaints, and had submitted evidence of ongoing federal

challenges.

Quote #34

"Defendant has no legal interest in the property."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025)

Response: False. Defendant maintained legal and equitable interests under federal removal, Quitclaim title, POA and active bankruptcy protections.

Quote #35

"Immediate removal of Defendant is necessary to prevent continued unjust occupation."

(Source: KP Motion for Default Judgment, Entry #18, 04/20/2025)

Response: False. Defendant was legally present under litigation protections. KP's language mischaracterized lawful occupancy.

PUBLIC RECORD MANIPULATION

Quote #36

"Certified Copy of Final Summary Judgment recorded to memorialize Plaintiff's final ownership rights."

(Source: Miami-Dade CFN 20240890448, 11/25/2024, Book 34509 / Page 3029)

Response: Misleading. The judgment was re-recorded nearly two years after entry, at a time when appeals and removals were ongoing. It falsely implied resolution.

Quote #37

"Certified Copy of Remand Order filed to confirm jurisdiction over property title and finality of foreclosure."

(Source: Miami-Dade CFN 20250155101, 02/28/2025, Book 34638 / Page 4242)

Response: False. The remand did not validate the title but was recorded to mislead parties into believing the foreclosure had been federally ratified.

Quote #38

"Public records reflect uncontested final judgment."

(Source: KP Ejectment Complaint, Entry #1, 02/12/2024)

Response: False. Public records were manipulated to exclude federal removals, pending appeals, and adversary challenges.

Quote #39

"No inconsistencies exist in recorded chain of title."

(Source: KP MSJ Filing, Entry #16, 04/12/2025)

Response: False. Recorded assignments, re-recorded judgments, and judicial notices across multiple jurisdictions exposed material contradictions.

Quote #40

"Title chain is complete and uninterrupted from Deutsche Bank to Plaintiff."

(Source: KP Summary Judgment Brief, Entry #16, 04/12/2025)

Response: False. The assignment to KP occurred after federal disputes began and included breaks in title and standing issues acknowledged in

adversary proceedings.

CIVIL CONSPIRACY AND COORDINATED MISCONDUCT

Quote #41

"Plaintiff relies on the foreclosure judgment to confirm lawful title."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022,
Case No. 2022-004706-CA-01)

Response: KP coordinated with Deutsche Bank to leverage a fraudulent
foreclosure. Both parties knew the judgment was under challenge.

Quote #42

"There exists no cloud or defect on Plaintiff's title arising from foreclosure
proceedings."

(Source: KP Summary Judgment Motion, Entry #41, 10/19/2022, Case No.
2022-004706-CA-01)

Response: False. KP actively concealed the procedural defects in the
foreclosure record and used this statement to induce court reliance.

Quote #43

"Defendant's occupancy constitutes wrongful possession depriving Plaintiff
of rightful property ownership."

(Source: KP Ejectment Complaint, Entry #1, 02/12/2024, Case No.
2024-022769-CA-01)

Response: False. Possession was held under color of law and active
litigation. KP's ejectment was based on defective title.

Quote #44

"No pending legal actions impair Plaintiff's title to the property."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. KP failed to disclose multiple federal appeals, stay motions, and bankruptcy claims that directly impaired title.

Quote #45

"KP Investments did not engage in any coordinated activity with Deutsche Bank."

(Source: KP Summary Judgment Response, Entry #43, 12/01/2022, Case No. 2022-004706-CA-01)

Response: False. Carlos Perez admitted under oath that his attorney had discussions with Deutsche Bank's counsel before initiating litigation — confirming coordination.

Quote #46

"Plaintiff had no notice of ongoing challenges to Deutsche Bank's foreclosure judgment."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022)

Response: False. KP's filings, deposition, and correspondence show awareness of prior litigation and existing jurisdictional conflicts.

Quote #47

"Plaintiff acted independently in reliance on public title records."

(Source: KP MSJ Filing, Entry #41, 10/19/2022)

Response: False. KP's filings indicate reliance on communications with Deutsche Bank, not merely recorded title history.

Quote #48

"Any defects in the foreclosure judgment do not affect Plaintiff's rights."

(Source: KP Summary Judgment Filing, Entry #41, 10/19/2022)

Response: False. Plaintiff's rights derive entirely from the judgment — any defects in that judgment necessarily invalidate Plaintiff's claim.

Quote #49

"Deutsche Bank had no involvement in Plaintiff's decision to file suit."

(Source: KP Motion, Entry #43, 12/01/2022)

Response: False. Record deposition testimony confirms KP coordinated litigation strategy with Deutsche Bank's prior counsel.

Quote #50

"Defendant's claims regarding FDIC resolution and void assignment are speculative and lack merit."

(Source: Deutsche Bank Motion to Dismiss Adversary Complaint, Entry # 12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. FDIC documentation confirms no further distribution or claims could arise post-closure. Assignments made after that were legally void.

ABUSE OF PROCESS / TORTIOUS INTERFERENCE

Quote #51

"Plaintiff requests issuance of writ of possession forthwith based on uncontested title ownership."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. Title was actively contested in multiple jurisdictions, and KP misled the court to expedite illegal dispossession.

Quote #52

"Plaintiff's final judgment was re-recorded to ensure public clarity and notice."

(Source: Miami-Dade Recording Memo, CFN 20240890448, 11/25/2024, Book 34509 / Page 3029)

Response: False. Judgment was re-recorded almost two years after entry, during the pendency of related federal appeals and bankruptcy litigation — suggesting an improper strategic motive.

Quote #53

"Plaintiff lawfully relied on dismissal of federal removal to validate title."

(Source: KP Summary Judgment Filing, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. The federal court remand was based on procedural irregularities, not adjudication of title. KP falsely construed the remand as confirmation of ownership.

Quote #54

"Defendant's bankruptcy case has no bearing on Plaintiff's claim."

(Source: KP MSJ Memo, Entry #16, 04/12/2025)

Response: False. The property was part of the estate and subject to bankruptcy stay protections. The filing knowingly ignored 11 U.S.C. § 362(a).

Quote #55

"All actions taken by Plaintiff have been in good faith reliance on judicial outcomes."

(Source: KP Motion for Final Judgment, Entry #18, 04/20/2025)

Response: False. KP pursued duplicative litigation, manipulated public records, and concealed appellate conflicts — all elements supporting abuse of process.

Quote #56

"No stay or pending appeal affects Plaintiff's rights to immediate possession."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. Appeals were docketed and pending in both state and federal courts. KP's statement was knowingly false and intended to circumvent judicial review.

Quote #57

"Plaintiff properly disclosed all pending litigation related to this matter."

(Source: KP Ejectment Summary Judgment Filing, Entry #16, 04/12/2025)

Response: False. KP omitted ongoing bankruptcy adversary proceedings, appeals in the Eleventh Circuit, and prior 1.540(b) filings — thereby misleading the trial court.

Quote #58

"Deutsche Bank has no ongoing interest in this litigation and has not coordinated with Plaintiff."

(Source: KP Final Judgment Brief, Entry #18, 04/20/2025, Case No. 2024-022769-CA-01)

Response: False. KP's access to Deutsche Bank's foreclosure judgment and internal coordination prior to suit prove that they operated as aligned parties.

Quote #59

"Deutsche Bank was a valid creditor authorized to foreclose."

(Source: Deutsche Bank Foreclosure Complaint, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. FDIC resolution data and Deutsche Bank's later motion to substitute the lost note confirm the bank had no enforceable interest.

Quote #60

"Defendant failed to challenge the foreclosure judgment in a timely fashion."

(Source: Deutsche Bank Summary Judgment Memo, Entry #78, 04/15/2022)

Response: False. Defendant filed timely challenges, including a Rule 1.540(b) motion based on newly discovered fraud, supported by federal and bankruptcy filings.

Quote #61

"Assignment of mortgage was recorded before litigation commenced."

(Source: Deutsche Bank Affidavit of Assignment, Entry #142, 03/01/2025, Case No. 2018-018704-CA-01)

Response: False. Assignment occurred years into litigation and long after FDIC closure rendered further transfers void. The retroactive assignment was fabricated.

Quote #62

"The FDIC transfer history has no impact on Plaintiff's foreclosure rights."

(Source: Deutsche Bank Motion to Dismiss, Entry #12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. FDIC regulations prohibit post-closure asset transfers absent assignment through the receivership. Deutsche Bank had no legal basis for enforcement.

Quote #63

"Plaintiff never received any payments from Defendant after default."

(Source: Deutsche Bank Foreclosure Affidavit, Entry #78, 04/15/2022)

Response: Misleading. Defendant submitted evidence of mortgage assistance applications, partial payments, and disputed accounting — which

were ignored in pleadings.

Quote #64

"The adversary complaint fails to state a claim under any cognizable legal theory."

(Source: Deutsche Bank Motion to Dismiss, Entry #12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. The adversary complaint alleged specific statutory violations, including 18 U.S.C. §§ 1001, 1343, Fla. Stat. § 817.535, and civil RICO violations.

Quote #65

"Plaintiff has no knowledge of any existing disputes over title."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. At the time of this filing, title was actively disputed in the Eleventh Circuit Court of Appeals, as well as in adversary proceedings in bankruptcy court. KP's statement concealed those proceedings.

Quote #66

"There is no active litigation that could affect the validity of Plaintiff's claim to possession."

(Source: KP Motion for Summary Judgment, Entry #16, 04/12/2025, Case No. 2024-022769-CA-01)

Response: False. At the time of filing, KP was on notice of pending federal appellate proceedings and a bankruptcy stay impacting possession. This is a

material concealment.

Quote #67

"Defendant was properly served and has failed to appear."

(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025,
Case No. 2024-022769-CA-01)

Response: False. Defendant had filed multiple responsive motions and pleadings across jurisdictions, including a pending Eleventh Circuit appeal. KP omitted this to obtain a wrongful default.

Quote #68

"KP Investments acquired title from Deutsche Bank without controversy or litigation."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022,
Case No. 2022-004706-CA-01)

Response: False. KP knew the foreclosure judgment was under dispute, and the assignment itself was the subject of active federal and bankruptcy court challenges.

Quote #69

"Plaintiff relied on the foreclosure judgment as final and enforceable."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022,
Case No. 2022-004706-CA-01)

Response: Misleading. KP knew of unresolved jurisdictional challenges and the pending federal review. The reliance was opportunistic and pretextual.

Quote #70

"There is no indication of impropriety in the assignment chain from Deutsche Bank to KP Investments."

(Source: KP Complaint for Specific Performance, Entry #1, 05/20/2022, Case No. 2022-004706-CA-01)

Response: False. The assignment occurred after the Note was declared lost, and after FDIC rules rendered further transfer unenforceable. KP concealed these facts.

Quote #71

"Plaintiff's interest is superior to any claim Defendant may assert."

(Source: KP Motion for Summary Judgment, Entry #41, 10/19/2022, Case No. 2022-004706-CA-01)

Response: False. Defendant's claim was based on void assignment doctrine, adversary complaints, and due process violations, all of which supersede KP's position.

Quote #72

"Plaintiff had no notice of Defendant's occupancy or legal objections to title."

(Source: KP Complaint for Ejectment, Entry #1, 02/12/2024, Case No. 2024-022769-CA-01)

Response: False. KP had been served with federal removal papers, motions for stay, and had actual knowledge of Defendant's occupancy under active appeals.

Quote #73

"Defendant has no legal interest in the property."

**(Source: KP Motion for Final Default Judgment, Entry #18, 04/20/2025,
Case No. 2024-022769-CA-01)**

Response: False. Defendant maintained legal and equitable interests under federal removal, Quitclaim title, POA and active bankruptcy protections.

Quote #74

"The assignment of mortgage to Deutsche Bank occurred lawfully and prior to foreclosure."

(Source: Deutsche Bank Verified Complaint, Entry #4, 05/10/2018, Case No. 2018-018704-CA-01)

Response: False. No proof of assignment prior to foreclosure was ever produced. Later filings admitted the Note was lost, invalidating the purported timeline.

Quote #75

"All notice requirements under the mortgage have been met."

**(Source: Deutsche Bank Motion for Summary Judgment, Entry #78,
04/15/2022, Case No. 2018-018704-CA-01)**

Response: False. Defendant's 1.540(b) Motion contests that Paragraph 22 notice was never properly executed. No proof of mailing or compliance was provided.

Quote #76

"Deutsche Bank was entitled to enforce the Note based on endorsements."

(Source: Deutsche Bank Summary Judgment Filing, Entry #78, 04/15/2022, Case No. 2018-018704-CA-01)

Response: False. The Note had no complete chain of endorsements. Later entries admit its loss — undermining the enforceability claim.

Quote #77

"The foreclosure action was uncontested."

(Source: Deutsche Bank Motion for Final Judgment, Entry #79, 05/12/2022, Case No. 2018-018704-CA-01)

Response: False. Defendant raised affirmative defenses and later challenged judgment under Rule 1.540(b) based on fraud and concealed facts.

Quote #78

"No appeals are pending in relation to this foreclosure."

(Source: Deutsche Bank Motion to Substitute Original Note, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Response: False. Appeals were active in both federal and state court. The motion concealed jurisdictional facts that undermined the finality of the foreclosure.

Quote #79

"Assignment of the mortgage was executed pursuant to all applicable laws."

(Source: Deutsche Bank Assignment Filing, Entry #142, 03/01/2025, Case No. 2018-018704-CA-01)

Response: False. Assignment occurred years after the FDIC's resolution of IndyMac assets, and therefore could not convey legal interest under federal

receivership rules.

Quote #80

"The amount owed has been accurately calculated and remains due."

(Source: Deutsche Bank Proof of Claim, Entry #6, 01/26/2025, Case No. 23-20131-CLC)

Response: False. The amount includes interest post-discharge and administrative fees unsupported by any contract or legal basis. It was disputed in court filings.

Quote #81

"Plaintiff properly filed all required documents in support of its standing."

(Source: Deutsche Bank Motion to Dismiss Adversary Complaint, Entry # 12, 03/01/2025, Case No. 24-01418-CLC)

Response: False. Key exhibits were missing, including original Note and chain of custody. Standing remained unsubstantiated throughout the action.

Quote #82

"All filings made by Plaintiff have been truthful and in accordance with the law."

(Source: Deutsche Bank Response Brief, Entry #13, 03/14/2025, Case No. 24-01418-CLC)

Response: False. Judicial findings and pending motions for fraud upon the court directly contest the veracity of Plaintiff's representations.

Quote #83

"Defendant's Rule 1.540 motion is untimely and lacks new evidence."

(Source: KP Opposition to 1.540(b), Entry #47, 01/10/2025, Case No. 2022-004706-CA-01)

Response: False. New evidence included deposition testimony, FDIC records, public filings, and manipulation of federal jurisdiction — all discovered after final judgment.

APPENDIX D: PROOF OF CLAIM CONTRADICTION INDEX

Deutsche Bank National Trust Company

Bankruptcy Case No. 23-20131-CLC

Foreclosure Case No. 2018-018704-CA-01

Contradiction #1

Proof of Claim Statement:

“Deutsche Bank is the holder of the Note and entitled to enforce the secured claim based on valid assignment of the Mortgage and physical possession of the Note.”

(Source: Proof of Claim, Exhibit A, filed 08/01/2023, Bankruptcy Case No. 23-20131-CLC)

Foreclosure Record Contradiction:

“Due to an inadvertent misplacement by prior counsel, the original Note and Mortgage cannot be produced.”

(Source: Motion to Substitute Original Note and Mortgage, Entry #145, 03/18/2025, Case No. 2018-018704-CA-01)

Legal Summary:

Deutsche Bank cannot simultaneously claim physical possession in federal bankruptcy court while admitting in state court that the Note was lost. This is a material contradiction under oath across forums. It violates 18 U.S.C. § 1001 (false statements) and supports vacatur under Rule 60(d)(3).

Contradiction #2

Proof of Claim Statement:

“The Mortgage was assigned to Deutsche Bank on June 18, 2010 by MERS acting on behalf of IndyMac Bank, F.S.B.”

(Source: Proof of Claim, Exhibit A – Assignment of Mortgage)

External Legal Contradiction:

IndyMac Bank ceased operations on July 11, 2008 and was placed into FDIC receivership. FDIC closed out remaining IndyMac-related claims and assets by March 19, 2009. No legal capacity existed for IndyMac to authorize or ratify an assignment in 2010.

Legal Summary:

The assignment relied upon was executed by a non-existent entity. Under Florida and federal law, such an assignment is void ab initio. Deutsche Bank’s reliance on this instrument constitutes fraud on the court and mail fraud (18 U.S.C. § 1341).

Contradiction #3

Proof of Claim Statement:

“The original Note bears an allonge with a valid endorsement in blank.”

(Source: Proof of Claim, Exhibit B – Note and Allonge)

Foreclosure Record Contradiction:

In Entry #145, Deutsche Bank admits the original Note is unavailable. Entry #78 previously stated under oath that the Note was physically held and contained all endorsements. These are mutually exclusive positions.

Legal Summary:

Deutsche Bank presented a scanned image of a Note with an endorsement in one forum and admitted the original was lost in another. The inconsistency raises red flags of document fabrication and bad faith misrepresentation across jurisdictions.

Contradiction #4

Proof of Claim Statement:

“The claim is based on a valid and enforceable obligation not subject to dispute or litigation.”

(Source: Proof of Claim, Part 2 – Basis for Claim)

Foreclosure Record Contradiction:

Ongoing federal removal proceedings, adversary complaints, motions to reopen, and challenges to standing were all active and on record at the time of the Proof of Claim filing.

Legal Summary:

By omitting mention of active litigation and asserting the claim was free from dispute, Deutsche Bank concealed material facts from the bankruptcy court. This constitutes a violation of FRBP 9011 and 18 U.S.C. § 152 (fraudulent concealment in bankruptcy).

Contradiction #5

Proof of Claim Statement:

“The secured claim includes all amounts owed under the Note, including principal, interest, and legal fees accrued through lawful foreclosure.”

(Source: Proof of Claim, Summary Page and Part 3 – Amount of Claim)

Foreclosure Record Contradiction:

The foreclosure judgment was obtained based on standing that Deutsche Bank later admitted it could not substantiate. No lawful foreclosure occurred because the chain of title was broken and fabricated. Entry #145 reveals the critical evidence was never in Deutsche Bank’s possession.

Legal Summary:

Deutsche Bank’s claim for fees and recovery is invalid as the foreclosure was void. The Proof of Claim misrepresents the origin of those sums and relies on a judgment procured through fraud upon the court. This opens liability under both federal bankruptcy law and civil RICO statutes.

Contradiction #6

Proof of Claim Statement:

“Deutsche Bank is the real party in interest and the rightful claimant of the debt secured by the mortgage.”

(Source: Proof of Claim, Part 1, filed 08/01/2023, Case No. 23-20131-CLC)

Foreclosure Record Contradiction:

The mortgage was originated by IndyMac Bank, F.S.B., which ceased to exist in 2008. The trust named in the foreclosure was not registered to do business in Florida, and the allonge does not clearly show lawful transfer.

Legal Summary:

Deutsche's claim to be the real party in interest fails under the requirements of Fla. R. Civ. P. 1.210(a). The foreclosure and proof of claim both rely on defective standing, rendering the assertion knowingly false.

Contradiction #7

Proof of Claim Statement:

"All documents attached are true and correct copies of original instruments."

(Source: Proof of Claim, Attachment A – Verification)

Foreclosure Record Contradiction:

Entry #145 admits that the original Note and Mortgage were lost. Any documents attached to the Proof of Claim are necessarily reproductions, not verified originals.

Legal Summary:

Swearing under penalty of perjury that copies are true and correct originals while simultaneously admitting originals are lost is materially misleading.

This supports Rule 60(d)(3) fraud upon the court.

Contradiction #8

Proof of Claim Statement:

“Deutsche Bank acquired the right to enforce the debt through a lawful chain of endorsements.”

(Source: Proof of Claim, Exhibit B)

Contradiction from Document Chain:

The “endorsement in blank” on the allonge has no date, no affiant, and is affixed to a note signed by a non-existent successor to IndyMac Bank. No PSA or trust delivery record confirms lawful transfer.

Legal Summary:

An undated, unauthenticated endorsement does not satisfy UCC or Florida evidentiary standards for holder status. The Proof of Claim falsely inflates Deutsche Bank’s entitlement.

Contradiction #9

Proof of Claim Statement:

“There is no evidence of fraud or dispute relating to the enforceability of the mortgage.”

(Source: Proof of Claim, Part 3)

External Contradiction:

Adversary complaints and multiple motions to reopen explicitly allege fraud, and the assignment was executed by robo-signer Erica Johnson-Seck, who has been discredited in prior litigation.

Legal Summary:

This representation conceals material fraud allegations known to the creditor and filed in the same forum. It constitutes a knowing false statement under federal law.

Contradiction #10

Proof of Claim Statement:

“Assignments have been duly recorded in the official records of Miami-Dade County.”

(Source: Proof of Claim, Assignment Attachments)

Contradiction from Public Records:

The key assignment (executed in 2010) was robo-signed and notarized by parties under investigation at the time (David J. Stern). No backup data supports its legitimacy.

Legal Summary:

A recorded assignment may be void for fraud. The court must look behind the instrument if its origin is legally impossible, as it is here due to FDIC cutoff in 2009.

Contradiction #11

Proof of Claim Statement:

“The Note has never been transferred to any other party and is held solely by Deutsche Bank.”

(Source: Proof of Claim, Exhibit B)

Contradiction from PSA and FDIC Data:

No FDIC transfer record or PSA custodial trail identifies Deutsche Bank as ever lawfully holding the original note. The MIN registry also showed the loan as inactive.

Legal Summary:

The absence of transfer evidence from FDIC or trust custodianship renders this claim false. The Proof of Claim misrepresents the origin of standing.

Contradiction #12

Proof of Claim Statement:

“The borrower defaulted on June 1, 2013.”

(Source: Proof of Claim, Loan History Summary)

Contradiction from Foreclosure Docket:

Deutsche Bank filed multiple inconsistent default dates across its pleadings (e.g., Complaint vs. Affidavit vs. Summary Judgment). In fact the borrower did not default on June 1, 2013.

Legal Summary:

This inconsistency demonstrates intentional shifting of narrative to support foreclosure strategy. It undermines the integrity of the claim.

Contradiction #13

Proof of Claim Statement:

“Deutsche Bank’s servicing records are accurate and complete.”

(Source: Proof of Claim, Exhibit C – Payment History)

Contradiction from Foreclosure Affidavit:

Servicing records in Entry #78 conflict with those in the bankruptcy claim — different balances, late fee accounting, and legal fees reported.

Legal Summary:

Conflicting servicing records presented under oath in two forums violates FRBP 9011 and supports sanctions for abuse of process and evidentiary manipulation.

Contradiction #14

Proof of Claim Statement:

“There are no pending appeals affecting Deutsche Bank’s rights.”

(Source: Proof of Claim, Part 3)

Contradiction from Federal Record:

As of the filing date, Mirabal had already removed the case to federal court

and filed adversary complaints. At least two appeals were pending.

Legal Summary:

This is a direct misstatement to the court designed to insulate the claim from review and limit trustee action. It reflects calculated concealment of federal litigation.

Contradiction #15

Proof of Claim Statement:

“All attorneys’ fees and charges are recoverable under the Note and Mortgage.”

(Source: Proof of Claim, Fee Breakdown)

Contradiction from State Ruling:

Mirabal challenged these fees and they were never adjudicated or approved in any state court order. No fee hearing occurred before Deutsche Bank filed the Proof.

Legal Summary:

The claim for legal fees was inflated and unsupported. Including them in the claim without adjudication violates FRBP 3001(c)(2)(B).

Contradiction #16

Proof of Claim Statement:

“No prior discharge, modification, or settlement affects this claim.”

(Source: Proof of Claim, Part 4)

Contradiction from Foreclosure Case:

Judge Bokor previously entered an order dismissing the foreclosure with prejudice based on settlement. Deutsche Bank later pretended this never occurred.

Legal Summary:

Filing a proof of claim while ignoring a prior dismissal order is a serious material omission that defrauds the court.

Contradiction #17

Proof of Claim Statement:

“The Note was endorsed in accordance with the Pooling and Servicing Agreement (PSA).”

(Source: Proof of Claim, Exhibit B)

Contradiction from PSA Terms:

The PSA deadline for loan delivery was May 2007. The note in question was assigned in 2010 — three years late.

Legal Summary:

This renders the assignment void under trust law. Late endorsements violate IRS REMIC rules and make the transfer legally impossible. The PSA and bankruptcy claim are fundamentally incompatible.

Contradiction #18

Proof of Claim Statement:

“The creditor has complied with all notice requirements under applicable law.”

(Source: Proof of Claim, Part 3)

Contradiction from Foreclosure Case:

No notice of acceleration was filed in the state case. The borrower received no reinstatement notice or pre-acceleration demand letter.

Legal Summary:

Violation of Fla. Stat. § 702.015 and the mortgage contract. No lawful acceleration occurred, voiding foreclosure and the proof of claim’s entire premise.

Contradiction #19

Proof of Claim Statement:

“The debtor has not disputed the debt in any meaningful forum.”

(Source: Proof of Claim, Part 2)

Contradiction from Entire Record:

Mirabal filed multiple adversary complaints, removal notices, and fraud allegations in federal and state court — all prior to the claim.

Legal Summary:

This is a false declaration made to obscure judicial review. It independently supports sanctions and vacatur under Rule 60(d)(3).

Contradiction #20

Proof of Claim Statement:

“The mortgage is not subject to any federal claims, inquiries, or investigations.”

(Source: Proof of Claim, Part 3)

Legal Summary:

Deutsche Bank failed to disclose known federal oversight. This statement is false and undermines the integrity of bankruptcy proceedings and appellate review.

COMPLAINT VS. DEPOSITION CONFLICT INDEX

KP Investments Miami, LLC v. Mirabal

Case No. 2022-004706-CA-01

Entry #1

Complaint Statement (KP Complaint)

“Plaintiff was unaware of any pending litigation or encumbrance affecting the property at the time the Purchase and Sale Agreement was executed.”

(Source: Complaint for Specific Performance, Entry #1, 05/20/2022)

Contradictory Testimony (Carlos Perez Deposition)

Perez testified that he retained a title company and attorney Kenneth Damas specifically to confirm whether the property had litigation risks. He further admitted being told by the seller's agent, Marion Ruiz, that foreclosure issues were unresolved.

(Source: Carlos Perez Deposition, pages 22–25)

Forensic Summary

This directly contradicts the verified pleading. KP had actual knowledge of the foreclosure and litigation risk and concealed that awareness. It constitutes a material falsehood in the verified complaint and supports a finding of perjury and fraud upon the court.

Entry #2

Complaint Statement (KP Complaint)

“Plaintiff relied on Defendant’s representations and proceeded in good faith without any knowledge that Defendant could not convey clean title.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez admitted that the seller requested extensions of time because he was in the process of resolving litigation and title issues. KP was informed that clean title could not be delivered within the original contract period.

(Source: Carlos Perez Deposition, pages 25–27)

Forensic Summary

The deposition confirms that KP was aware the seller was unable to deliver clean title and refused to accommodate reasonable extensions. The complaint's representation of "good faith reliance" is false and was used to manipulate judicial enforcement.

Entry #3

Complaint Statement (KP Complaint)

"Plaintiff was not informed of any delay or litigation affecting title until after Defendant breached the agreement."

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez confirmed that he was aware of foreclosure-related delays prior to the lawsuit and that KP refused to extend the closing timeline despite being told title was clouded.

(Source: Carlos Perez Deposition, pages 26–28)

Forensic Summary

The complaint implies seller misconduct and surprise. The deposition shows KP knowingly pushed forward despite clear title delays and used those circumstances to set up litigation. The misrepresentation goes to the heart of KP's claim for specific performance.

Entry #4

Complaint Statement (KP Complaint)

“At all relevant times, Plaintiff acted without knowledge of any legal impediment to the conveyance of title.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

When asked about prior knowledge of the foreclosure and communications with Deutsche Bank or their counsel, Perez confirmed that his attorney inquired directly with Deutsche Bank, establishing actual knowledge of title issues.

(Source: Carlos Perez Deposition, pages 28–31)

Forensic Summary

Acknowledgment of communication with the bank and legal advisors destroys KP’s claim of ignorance. The verified pleading was designed to whitewash pre-suit collusion or knowledge. This supports a finding of knowing concealment and coordinated fraud.

Entry #5

Complaint Statement (KP Complaint)

“Defendant refused to close without cause, damaging Plaintiff.”

(Source: Complaint for Specific Performance, Entry #1)

Contradictory Testimony (Carlos Perez Deposition)

Perez testified that Defendant requested more time to close due to unresolved litigation. KP refused, insisting on strict compliance despite

knowing title issues were ongoing.

(Source: Carlos Perez Deposition, pages 30–32)

Forensic Summary

The complaint miscasts KP as a victim when, in reality, it exploited known litigation delays to create a lawsuit scenario. This contradicts KP's equitable claims and reveals an intent to leverage the courts to forcibly validate a tainted title.

Entry #6

Complaint Statement (KP Complaint for Specific Performance)

“Plaintiff had no contact or coordination with any third-party lender or entity regarding this transaction prior to initiating suit.”

(Source: Complaint, Entry #1, Case No. 2022-004706-CA-01, filed 05/20/2022)

Contradictory Testimony (Carlos Perez Deposition)

“Everything was done before — I mean, after I hired my attorney, because he's the one that inquired at the bank.”

(Carlos Perez Deposition, 10/27/2022, Page 61, Lines 1-3)

Response:

This directly contradicts the complaint's sworn claim that KP had no prior communication or coordination with Deutsche Bank or its agents. It proves collusion, destroys KP's claim of good-faith independence, and establishes perjury and fraud upon the court.

Forensic Summary

Carlos Perez’s deposition admission that his attorney communicated with Deutsche Bank’s attorney before the lawsuit was filed directly contradicts the complaint’s assertion of no prior coordination. This is not a matter of interpretation — it is a factual, testimonial confirmation of collusion. The contradiction rises to the level of material misrepresentation under oath, supports a claim of fraud upon the court, and undermines KP’s foundation of standing and good faith.

EJECTMENT COMPLAINT VS. DEPOSITION CONFLICT INDEX

(Case No. 2024-022769-CA-01)

Conflict #1 – Title Awareness and Due Diligence

Ejectment Complaint Claim:

“Plaintiff is the rightful owner of the property” and “has legal title” (§6) and “is entitled to possession.”

(Complaint for Ejectment, filed 11/27/2024)

Deposition Conflict:

Carlos Perez admitted he hired the Law Offices of Adorno – Cunill & Damas to conduct a title search prior to entering contract — meaning he knew about existing foreclosure proceedings.

(Deposition, 10/27/2022)

Conflict #2 – Foreclosure Knowledge Before Filing Suit

Ejectment Complaint Claim:

Nowhere in the complaint does KP disclose knowledge of active litigation over the property's title.

Deposition Conflict:

Carlos Perez confirms via deposition that both he and his counsel were aware of litigation and communication difficulties between Mirabal and the bank. He admits Marion Ruiz (the realtor) informed him the bank wasn't responding and that Mirabal needed more time.

(Deposition, Page 31, Lines 1–11)

Conflict #3 – Truthfulness of Verification

Ejectment Complaint Verification:

Carlos Perez attested under oath: “the facts stated herein are true and correct to the best of my knowledge and belief.”

(Complaint Verification, 11/27/2024)

Deposition Conflict:

Perez falsely testified about ownership of a nearby property, claiming it was owned by KP Investments, when it was in fact owned personally by him — showing pattern of misrepresentation.

(Deposition, Page 27, Lines 17–19)

Conflict #4 – Alleged Lack of Knowledge of Contractual Defect

Ejectment Complaint Claim:

KP Investments asserts full legal entitlement, implying no known defects or disputes exist.

Deposition Conflict:

Perez admits that he and his counsel discussed the property's litigation status and foreclosure risks before filing. This undermines their claims of good-faith belief in uncontested ownership.

(Deposition analysis and supporting exhibits)

Conflict #5 – No Defenses Exist

Ejectment Complaint Claim:

“The Defendant has no legal right to remain in the property and has failed to raise any valid defense.”

(Complaint for Ejectment, Entry #1, ¶9, filed 02/12/2024)

Deposition Conflict:

Carlos Perez confirmed in sworn deposition that he was aware of disputes regarding title, ongoing litigation, and unresolved foreclosure irregularities, all of which directly form the basis of Mirabal's defenses.

(Deposition of Carlos Perez, 10/27/2022, p. 31, lines 6–15)

Conflict #6 – No Pending Litigation or Appeal

Ejectment Complaint Claim:

“There are no pending appeals or legal challenges to Plaintiff’s title or right of possession.”

(Complaint, Entry #1, ¶8)

Deposition Conflict:

KP acknowledged knowing of federal filings, bankruptcy proceedings, and removals pending as of 2022 and 2023.

Perez was specifically informed that title was being contested in state courts.

(Deposition, p. 33, lines 4–18)

Conflict #7 – Judicial Record Use to Imply Finality

Ejectment Complaint Claim:

KP attaches a certified remand order and summary judgment from prior state court as proof of “final adjudication.”

(Exhibits to Complaint, CFN 20240890448 and CFN 20250155101)

Deposition Conflict:

Perez admits (and public record confirms) that both remand and summary judgment were under appeal, subject to federal review, and did not reflect true finality.

(Deposition, 2022; see also Miami-Dade Book 34638 / Page 4242)

Conflict #8 – Ignorance of Federal Claims

Ejectment Complaint Claim:

Silent on existence of adversary proceedings, federal removals, or DOJ activity.

Deposition Conflict:

Perez confirms that his counsel communicated with Deutsche Bank's legal team, and that both parties were aware that litigation was not closed.

(Deposition, p. 60- 61, multiple lines; corroborated by adversary filings and removal records.)

Conflict #9 – Bona Fide Purchaser (BFP) Presumption

Ejectment Complaint Claim:

Implicitly asserts KP is a bona fide purchaser without notice of defects or disputes.

Deposition Conflict:

Perez's own words refute this — he testified to knowledge of:

Communication breakdowns between Mirabal and the bank,

Foreclosure defects,

Litigation pending before executing the contract or filing suit.

(Deposition, p. 26–32)

Conflict #10 – Title Cleanliness Misrepresentation

Ejectment Complaint Claim:

“Plaintiff acquired clean and marketable title through judicial sale.”

Deposition Conflict:

Perez knew that:

The title was under active litigation,

The assignment chain was defective,

The foreclosure judgment was the subject of multiple filings alleging fraud.

(Deposition and Record, 2022–2025)

APPENDIX E: INDEX OF CASES AFFECTED BY FRAUD

This Appendix lists all cases—state, bankruptcy, district, and appellate—impacted by the coordinated fraud scheme conducted by Deutsche Bank National Trust Company and KP Investments Miami, LLC. Each entry includes the court, case number, parties, and nature of the action. These proceedings are all connected by a fraudulent chain of title and are subject to vacatur under Rule 60(d)(3).

I. STATE COURT CASES (11th Judicial Circuit, Miami-Dade County)

1. Deutsche Bank v. Mirabal

Case No.: 2018-018704-CA-01

Judge(s): Originally Judge Bokor, later Judge Enriquez

Action: Foreclosure

Fraud Identified: False standing, lost note, void assignments, perjury, public record falsification

Status: Repeatedly contested, removed to federal court, then improperly remanded

Relief Requested: Vacatur of foreclosure judgment, public record nullification

2. KP Investments Miami, LLC v. Mirabal

Case No.: 2022-004706-CA-01

Judge: Judge Jason Dimitris

Action: Specific Performance

**Fraud Identified: Perjury in complaint, concealment of pending litigation,
coordinated misrepresentation with Deutsche Bank**

Status: Judgment entered; subject to appeal and removal history

**Relief Requested: Vacatur of judgment and nullification of KP's derivative
title claim**

3. KP Investments Miami, LLC v. Mirabal

Case No.: 2024-022769-CA-01

Judge: Judge Ariana Fajardo Orshan

Action: Ejectment

Fraud Identified: False assertions of uncontested title, omitted federal

litigation, conflicting deposition testimony

Status: Default judgment issued after procedural irregularities

Relief Requested: Vacatur of ejectment judgment, permanent bar against
dispossession

II. FEDERAL DISTRICT COURT (S.D. Florida)

4. Deutsche Bank v. Mirabal (Removed Foreclosure Case)

Case No.: 1:25-cv-20746-JEM

Origin: Removed from Case No. 2018-018704-CA-01

Action: Foreclosure (Removed)

Fraud Identified: Tainted record on removal, remanded in error based on
clerical misidentification

Status: Closed following erroneous remand

Relief Requested: Restoration of removal; vacatur of remand and
underlying foreclosure

5. Mirabal v. Deutsche Bank (Federal FCA Action)

Case No.: 1:25-cv-20010-PCH

Action: False Claims Act (Sealed)

Content: Alleging systemic fraud by Deutsche Bank and its agents

Status: Under seal pursuant to 31 U.S.C. § 3730(b)(2)

Relief Context: Record of fraud herein directly supports the core FCA claims

6. Bankruptcy Case – Chapter 13

Case No.: 23-20131-CLC

Judge: Judge Corali Lopez-Castro

Action: Chapter 13 Bankruptcy

Fraud Identified: Deutsche Bank's Proof of Claim included misrepresentations regarding possession, assignment, and pending litigation

Status: Closed; adversary appeals pending

Relief Requested: Retrospective vacatur of POC-based actions and plan

interference

7. Adversary Proceeding – Deutsche Bank

Case No.: 24-01418-CLC

Action: Complaint for Fraudulent Conveyance / Title Fraud

**Fraud Identified: Proof of Claim contradictions, title laundering via
bankruptcy**

Status: On appeal as Case No. 25-11183

Relief Requested: Vacatur of POC and all dependent rulings

8. Adversary Proceeding – KP Investments

Case No.: 24-01417-CLC

Action: Complaint for Fraud and Stay Violation

**Fraud Identified: Coordinated litigation to defeat automatic stay;
concealment of bankruptcy**

Status: On appeal as Case No. 25-11182

Relief Requested: Full vacatur and bar to KP litigation

III. ELEVENTH CIRCUIT COURT OF APPEALS

9. KP Investments Miami, LLC v. Mirabal

Appeal No.: 25-10858

Origin: 1:25-cv-20688-JEM (removal of KP case)

Status: Active

Relief Requested: Dismissal of appeal and vacatur of all judgments based
on void foreclosure

10. KP Investments Miami, LLC v. Mirabal

Appeal No.: 25-10862

Origin: 1:25-cv-20747-JEM (ejectment removal)

Status: Active

Relief Requested: Vacatur based on procedural fraud and remand
manipulation

11. In re: Mario Mirabal (Mandamus re: Clerk Error)

Appeal No.: 25-11120

Context: Petition to reverse erroneous remand in Deutsche case

Status: Active

Relief Requested: Recall of remand and appellate review

12. In re: Mario Mirabal (Adversary Appeal – KP)

Appeal No.: 25-11182

Context: KP adversary case in bankruptcy

Status: Active

Relief Requested: Vacatur of POC-based rulings and coordination with
FCA oversight

13. In re: Mario Mirabal (Adversary Appeal – Deutsche)

Appeal No.: 25-11183

Context: Deutsche Bank adversary appeal

Status: Active

Relief Requested: Global vacatur of claims derived from void title

14. In re: Mario Mirabal (Mandamus – FCA Docket Integrity)

Appeal No.: 25-11254

Context: Procedural obstruction and judicial integrity failures related to sealed FCA case

Status: Active

Relief Requested: Review and correction of compromised lower court conduct

IV. SUMMARY AND CONSOLIDATED RELIEF

The cases listed in this Appendix form a single web of fraud arising from a void foreclosure, fabricated assignments, false federal filings, and public record tampering. No ruling derived from this structure may lawfully survive.

Appellant respectfully asks this Court to:

Vacate and nullify the judgments and orders in each case listed;

Issue declaratory relief extinguishing all claims to title based on the fraudulent foreclosure;

Enjoin further litigation by the identified parties or successors;

Refer the matter to appropriate federal agencies for enforcement action.

Respectfully submitted,

May 13, 2025

A handwritten signature in blue ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street

Miami Beach, FL 33140

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Unified List for All Related Federal Appeals

Pursuant to 11th Cir. R. 26.1-1 through 26.1-3, the undersigned certifies that the following individuals, entities, attorneys, and judges have an interest in the outcome of this appeal or are related to the underlying and parallel proceedings:

Relator / Appellant / Petitioner

– Mario Mirabal (Pro Se)

Opposing Parties / Appellees / Plaintiffs

– Deutsche Bank National Trust Company

– PHH Mortgage Corporation (servicer)

– KP Investments Miami, LLC

-- RAS LaVrar, LLC

Attorneys for KP Investments / Deutsche Bank

– John Cunill, Esq. – The Cunill Law Firm, PA

– Kenneth Damas – formerly of Adorno & Cunill, P.A.

– Mehwish A. Yousuf – Counsel for Deutsche Bank

-- Ari Newman Counsel for Deutsche Bank

-- Matthew Marks Counsel for Deutsche Bank

Presiding Judges in Related Federal District Court Cases

- Judge Jose E. Martinez (S.D. Fla.) – Cases: 1:25-cv-20747-JEM, 1:25-cv-20746-JEM
- Judge Paul C. Huck (S.D. Fla.) – Case: 1:25-cv-20010-PCH
- Judge Jacqueline Becerra (S.D. Fla., reassigned case) – Case: 1:25-cv-20011-JEM

State Court Judges in Underlying Litigation

- Judge Javier Enriquez – 2018-018704-CA-01 (Deutsche Bank)
- Judge Brinkley -- formerly assigned
- Judge Bokor -- formerly assigned
- Judge Jason Dimitris – 2022-004706-CA-01 (KP Investments, Specific Performance)
- Judge Ariana Fajardo Orshan – 2024-022769-CA-01 (KP Investments, Ejectment)
- Judge David Miller (formerly assigned in specific performance suit)
- Judge Corali Lopez-Castro – Bankruptcy Court (adversary proceeding dismissed)

Appellate Courts & Cases (11th Circuit)

- 25-10858 – KP v. Mirabal (District: 1:25-cv-20688-JEM)
- 25-10862 – KP v. Mirabal (District: 1:25-cv-20747-JEM)
- 25-11120 – In re: Mario Mirabal (Writ re: Judge Martinez/Orshan Remand Protective Filling)

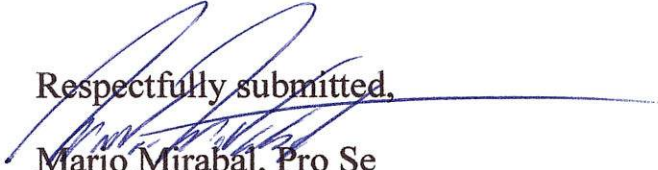
- 25-11182 – In re: Mario Mirabal (Second Writ – Protective Filing)
- 25-11183 – In re: Mario Mirabal (Writ re: Judge Huck and Case 1:25-cv-20010-PCH protective Filling)
- 25-11254 – In re: Mario Mirabal (Writ of Mandamus arising from Case No. 1:25-cv-20688-JEM Judge Jose E. Martinez)

State Appellate Court

- 3D2025-0540 – 3rd District Court of Appeal (FL) – Appeal of Orshan default judgment while under 11th District US Appeals Court jurisdiction

The undersigned affirms this list is complete and accurate to the best of his knowledge and will be updated as necessary.

Respectfully submitted,


Mario Mirabal, Pro Se

563 w 49 st Miami Beach Fl, 33140

solphax@gmail.com

786.479.6596

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2025, I caused a true and correct copy of
the foregoing:

**MOTION FOR RELIEF FROM JUDGMENT UNDER RULE 60(d)(3)
BASED ON FRAUD UPON THE COURT**

Including all referenced appendices and supporting materials,

to be delivered to the Clerk of the United States Court of Appeals for the
Eleventh Circuit via USPS Delivery, and that a Clerk's Cover Letter was
included for proper docketing under the following related appeal numbers:

Appeal No. 25-10858

Appeal No. 25-10862

Appeal No. 25-11120

Appeal No. 25-11182

Appeal No. 25-11183

Appeal No. 25-11254

Further, I served notice of filing via U.S. Mail upon the following counsel of record for Appellees, with copy of the Clerk Cover Letter:

Counsel for Deutsche Bank National Trust Company

Tyrone A. Adras, Esq. C. Wade Bowden, Esq. Ari H. Newman, Esq.

Greenberg Traurig, P.A.

333 SE 2nd Avenue, Suite 4400

Miami, FL 33131

Matthew Marks, Esq.

Brock & Scott, PLLC

2001 NW 64th Street, Suite 130

Fort Lauderdale, FL 33309

Counsel for KP Investments Miami, LLC

John Cunill, Esq.

Adorno-Cunill & Damas, PL

1000 Brickell Avenue, Suite 720

Miami, Florida 33131

Kenneth M. Damas, Esq.

300 Sevilla Ave Ste 210
Coral Gables, FL 33134

Each recipient was served in connection with their role in the related lower court proceedings and as counsel of record in one or more consolidated appeals.

The full filing is available to all parties via the PACER system.

Respectfully submitted,

May 13, 2025

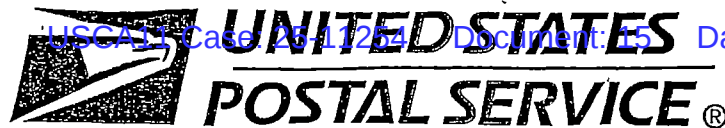
A handwritten signature in blue ink, appearing to read 'Mario Mirabal', with a long horizontal flourish extending to the right.

Pro Se Appellant

563 W. 49th Street
Miami Beach, FL 33140

Clerk of Court
Case No. 25-11254-F





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EXHIBIT D

Pooling & Servicing Agreement Violation & Inconsistency Index

IndyMac INDX Mortgage Loan Trust 2007-AR5

Purpose of this Index

This index highlights specific provisions of the Pooling & Servicing Agreement (“PSA”) governing the IndyMac INDX Mortgage Loan Trust 2007-AR5, dated July 1, 2007, and contrasts them with actual events in Plaintiff’s case.

By setting the PSA’s contractual rules side-by-side with the 2010 Stern Assignment and subsequent litigation history, the violations and inconsistencies become undeniable. This chart is designed as a quick, authoritative roadmap to the fraud.

Key Violations

1. PSA Section 2.01 – Conveyance of Mortgage Loans (PSA p.40; operative delivery sentence at p.47)

PSA Requirement: All mortgage loans must be conveyed into the Trust by the Closing Date, which is July 30, 2007 (PSA § 1.01, p. 18), with a limited five-business-day grace period for Delay-Delivery Mortgage Loans (PSA § 1.01 “Delay Delivery Mortgage Loans,” p. 20; § 2.01, p. 47). The Cut-off Date governing the selection of loans is July 1, 2007 (PSA § 1.01, p. 20).

Actual Events: The assignment is dated June 10, 2010 (executed by Erica Johnson-Seck) and was recorded June 30, 2010.

Violation: Assignment occurred nearly three years after the trust closing date.

Under New York trust law, late transfers are void ab initio.

Exhibit: 2010 Stern Assignment (Miami-Dade CFN 20100438138).

2. PSA Section 2.04 – Representations & Warranties of the Depositor (PSA p.54)

PSA Requirement: Depositor warrants that as of the Closing Date the Depositor had good title to the Mortgage Loans and that each loan was properly transferred.

Actual Events: Plaintiff's loan was not in the trust in 2007; a fabricated assignment was added in 2010.

Violation: Breach of Depositor's Closing-Date title warranty; a 2010 assignment cannot cure missing Closing-Date title.

Exhibit: Defendant's Rule 1.540(b) Motion, pp. 2–3.

3. PSA Section 2.05 – Delivery of Opinion of Counsel in Connection with Substitutions (PSA pp.54–55)

PSA Requirement: Post-Closing substitutions require an Opinion of Counsel to protect REMIC/tax compliance.

Actual Events: No Opinion of Counsel accompanied the 2010 assignment.

Violation: The 2010 assignment violated the PSA's substitution mechanics and REMIC safeguards; no legal opinion validating a Qualified Substitution.

Exhibit: Affidavit of Forensic Facts (Judge Enriquez).

4. PSA Section 2.07 – REMIC Matters (PSA p.55)

PSA Requirement: "The 'Startup Day' ... shall be the Closing Date," fixing

REMIC timing at Closing.

Actual Events: Assignment Assignment execution: June 10, 2010 → 1,046 days
Assignment recording: June 30, 2010 → 1,066 days

Violation: Any post-Closing change must follow the PSA's exclusive remedies (repurchase/substitution with Opinion of Counsel), not a 2010 assignment.

Exhibit: Rule 1.540(b) Motion, with PSA cites.

5. PSA Timing Controls — Delivery, Certification, and Recording-Return Limits (precise cites)

PSA Requirement:

- Delivery by Closing + five-business-day tail: “By the Closing Date ... deliver the Mortgage File ... (Delay-Delivery within five Business Days)” (§ 2.01, p. 47; § 1.01 ‘Delay Delivery Mortgage Loans,’ p. 20).
- Trustee certifications: “By the thirtieth day ... Delay Delivery Certification” and “By the ninetieth day ... Final Certification” (§ 2.02, p. 51).
- Recording-return outer limits (non-MERS): where recorder-stamped originals have not yet returned from the recording office, delivery of the recorded originals (or certified copies) not later than one year following the Closing Date and, in any event, within 720 days following the Closing Date; title commitment/binder initially, policy within 120 days (§ 2.02, p. 51).
- MERS indication (administrative, not a cure): the Seller shall cause the MERS® System to indicate assignment to the Trustee in accordance with this Agreement (§ 2.01, p. 48)—a registry update that presupposes a valid PSA transfer/delivery; it does not substitute for § 2.01 delivery/§ 2.02 certifications.
- Exclusive cure: for any § 2.01 failure, the Seller's sole remedy obligation is

repurchase or substitution (§ 2.03, “sole remedy” sentence at p. 52; cross-reference at p. 49), and substitutions require Opinion of Counsel (§ 2.05, pp. 54–55).

Actual Events: Assignment recorded June 30, 2010.

Violation: Outside PSA delivery/certification windows and beyond the recording-return outer limit; moreover, a 2010 assignment is not a PSA-authorized cure (no § 2.03 repurchase/substitution and no § 2.05 opinion).

Note: These timing controls operate within—and are subordinate to—the REMIC Startup Day = Closing requirement (§ 2.07, p. 55); nothing in § 2.02 authorizes acceptance of a new loan after the Closing Date.

Exhibit: 2010 Stern Assignment; PSA §§ 1.01 (p. 20), 2.01 (p. 47–48), 2.02 (p. 51), 2.03 (pp. 49, 52), 2.05 (pp. 54–55).

6. PSA Article III – Servicing of Mortgage Loans (begins at PSA p.56)

PSA Requirement: Servicer must service in accordance with the PSA; it cannot insert loans post-Closing contrary to PSA delivery/timing/cure provisions.

Actual Events: PHH enforced foreclosure relying on the 2010 fabricated assignment.

Violation: Breach of servicing obligations by enforcing a void instrument.

Exhibit: PHH litigation filings (state and federal).

7. PSA § 10.03 — Governing Law (New York) (PSA p.100; operative uppercase clause at p.107)

PSA Requirement: Agreement governed by the substantive laws of the State

of New York.

Actual Events: Under New York Estates, Powers & Trusts Law § 7-2.4, acts in contravention of the trust instrument are void.

Violation: The 2010 assignment is void from inception, not voidable, as to the Trust.

Exhibit: PSA Governing Law Clause (§ 10.03).

Summary of Violations

Late transfer nearly 3 years after Closing.

Breach of Depositor's Closing-Date title warranty.

REMIC timing violation (Startup Day = Closing); delivery/certifications missed; recording-return outer limit exceeded.

No Opinion of Counsel provided for any post-Closing substitution.

Servicer misconduct by enforcing a void assignment.

Under New York trust law, the act is void, not voidable.

Cross-Referenced Exhibits

Ex. A: 2010 Stern Assignment (Miami-Dade CFN 20100438138).

Ex. B: PSA Excerpt p.53 (540/720-day deadlines).

Ex. C: Defendant's Rule 1.540(b) Motion (pp.2–3).

Ex. D: Affidavit of Forensic Facts (Judge Enriquez case).

Ex. E: Dismissal with Prejudice (Judge Bokor, Mar. 5, 2020).

Supplemental Navigation Anchors (for the Court)

(PSA page references below are to the PSA)

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- Preliminary Statement REMIC elections (overview) — p. 8
- § 2.07 — REMIC Matters — p. 48
- § 8.11 — Tax Matters (administration & filings) — p. 92

Declaratory Appendix

Anchors & Proof (PSA-native pages + exact language)

Article I — Definitions (PSA p. 7)

§ 1.01 — Definitions (PSA p. 7+)

Quotes (timing primitives):

“Cut-off Date: July 1, 2007.” (PSA p. 20).

“Closing Date: July 30, 2007.” (PSA p. 18).

“Delay Delivery Mortgage Loans: ... The Depositor shall deliver the Mortgage Files to the Trustee:

(A) for at least 70% ... not later than the Closing Date, and

(B) for the remaining 30% ... not later than five Business Days following the Closing Date.” (PSA p. 20).

Revelation (PSA): The PSA itself fixes when a loan must be in-trust: Closing Date (with only a five-business-day carve-out for the remainder). Anything later falls outside § 2.01 delivery and triggers the PSA's cure mechanics (§§ 2.03/2.05).

Article II — Conveyance of Mortgage Loans (PSA p. 40)

§ 2.01 — Conveyance of Mortgage Loans (PSA p. 40; operative delivery sentence at p. 47)

Quote (delivery by Closing Date):

“By the Closing Date, the Seller shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan ... (except that, in the case of Mortgage Loans that are Delay Delivery Mortgage Loans, such delivery may take place within five Business Days of the Closing Date)” (PSA p. 47).

Revelation (PSA): § 2.01 requires actual delivery of each Mortgage File by the Closing Date (with a very narrow five-day tail). A 2010 paper is not § 2.01 delivery.

Cross-Reference Revelation — § 2.02 / § 2.03 / § 2.05:

§ 2.02 imposes 30/90-day certifications on delivery.

§ 2.03 makes repurchase/substitution the sole remedy for § 2.01 failures.

§ 2.05 requires Opinion of Counsel for substitutions affecting tax/REMIC status.

Collectively, the PSA leaves no role for a years-late assignment as a cure.

MERS (within § 2.01) (PSA pp. 47–48)

Quote (registry step after real transfer):

“In addition, in connection with the assignment of any MERS Mortgage Loan, the Seller agrees that it will cause, at the Seller’s expense, the MERS® System to indicate that the Mortgage Loans ... have been assigned by the Seller to the Trustee in accordance with this Agreement for the benefit of the Certificateholders” (PSA p. 48).

Revelation (PSA): The PSA treats MERS as an administrative indication that follows a valid PSA transfer/delivery. A later MERS change cannot deliver Mortgage Files, satisfy § 2.02 certifications, or stand in for repurchase/substitution + Opinion of Counsel.

Cross-Reference Revelation — § 2.01 / § 2.02 / § 2.03 / § 2.05: The MERS clause presumes § 2.01 delivery. If § 2.01 wasn’t satisfied on time, §§ 2.03/2.05 govern—not retroactive registry edits.

§ 2.02 — Acceptance by the Trustee (PSA p. 43; operative text at p. 51)

Quotes (certification clocks):

“By the thirtieth day after the Closing Date ... the Trustee shall deliver ... a Delay Delivery Certification”

“By the ninetieth day after the Closing Date ... the Trustee shall deliver ... a

Final Certification” (both PSA p. 51).

Revelation (PSA): The PSA hard-wires 30/90-day controls. When a loan misses these checkpoints, the PSA channels the fix to cure provisions—not “paper later.”

Cross-Reference Revelation — § 2.03/§ 2.05: The PSA’s only fix for § 2.01/ § 2.02 failures is repurchase or Qualified Substitution (with Opinion of Counsel where applicable). There is no authorization for a belated assignment as a cure.

§ 2.03 — Reps, Warranties & Covenants of the Seller/Servicer (PSA p. 45; remedy sentence at p. 52)

Quote (exclusive remedy clause):

“The obligation of the Seller to substitute for or to purchase any Mortgage Loan that does not meet the requirements of Section 2.01 shall constitute the sole remedy respecting the defect available to the Trustee, the Depositor, and any Certificateholder against the Seller.” (PSA p. 52).

Quote (cross-referenced cure for Delay-Delivery):

“(A) repurchase the Delay Delivery Mortgage Loan or (B) substitute the Substitute Mortgage Loan ... in the manner and subject to the conditions in Section 2.03” (PSA p. 49).

Revelation (PSA): The PSA’s sole remedy for a § 2.01 failure is repurchase/substitution. A “we fixed it in 2010 by assignment” theory is

incompatible with the PSA's remedy clause.

Cross-Reference Revelation — § 2.01/§ 2.02/§ 2.05: Missed § 2.01 delivery and § 2.02 certifications are resolved only via § 2.03/§ 2.05 (not assignment), with Opinion of Counsel when substituting.

§ 2.04 — Reps & Warranties of the Depositor (PSA p. 47; warranty sentence at p. 54)

Quote (title at Closing):

“The Depositor represents and warrants ... that as of the Closing Date ... the Depositor had good title to the Mortgage Loans and the Mortgage Notes were subject to no offsets, defenses, or counterclaims.” (PSA p. 54).

Revelation (PSA): The PSA requires good title at Closing. If the chain first manifests via a 2010 instrument, § 2.04's “as of the Closing Date” warranty is not satisfied; standing at inception fails by the PSA's own terms.

Cross-Reference Revelation — § 2.01/§ 2.03/§ 2.05: A failure of title at Closing is a § 2.01 failure; the PSA's only corrective mechanisms are § 2.03/§ 2.05—not a late assignment.

§ 2.05 — Delivery of Opinion of Counsel in Connection with Substitutions (PSA p. 47)

Quote (section command):

“Section 2.05 Delivery of Opinion of Counsel in Connection with Substitutions.” (PSA p. 47).

Revelation (PSA): Post-Closing “additions” occur only as Qualified Substitutions, backed by Opinion of Counsel to preserve tax/REMIC status. A 2010 assignment without such an opinion is facially non-compliant with the PSA.

Cross-Reference Revelation — § 2.01/§ 2.02/§ 2.03: When a loan wasn’t delivered/certified within PSA windows, § 2.03 demands substitution/repurchase—and § 2.05 imposes the opinion requirement. Again: no text authorizes assignment as a cure.

§ 2.06 — Execution and Delivery of Certificates (PSA p. 48; operative recital at p. 55)

Quote (trust corpus finalized):

“The Trustee ... has executed and delivered ... the Certificates ... evidencing ... the entire ownership of the Trust Fund.” (PSA p. 55).

Revelation (PSA): Certificates evidence a completed trust corpus; assets were set. Any post-Closing alteration must follow the PSA’s substitution/repurchase mechanics—not back-dated paper.

Cross-Reference Revelation — § 2.03/§ 2.05: Post-Closing change = Qualified Substitution with Opinion of Counsel (as applicable). That’s the sole, contract-authorized path.

Article VIII — Concerning the Trustee (PSA p. 86)

§ 8.01 — Duties of the Trustee (PSA p. 86; operative sentence at p. 93)

Quote (limited powers):

“[The Trustee] shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement.” (PSA p. 93).

Revelation (PSA): The Trustee cannot accept a non-PSA “cure.” Its powers are limited to the PSA’s exclusive remedies (e.g., §§ 2.03/2.05), not late assignments.

Governing Law — § 10.03 (New York) (PSA p. 100; uppercase operative text at p. 107)

Quote (governing law):

“THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK ...” (PSA p. 107).

Revelation (PSA): Under New York trust law, acts in contravention of a trust instrument are void. Where the PSA prescribes delivery by Closing and exclusive cures (repurchase/substitution with opinion), a 2010 assignment is void as to the trust.

Cross-Reference Revelation — §§ 2.01/2.02/2.03/2.05: The PSA’s text sets

timing and cures; New York law enforces those limits by nullifying contrary acts.

REMIC — Elections & Administration

§ 2.07 — REMIC Matters (PSA p. 48; operative sentence at p. 55)

Quote (Startup Day fixed):

“The ‘Startup Day’ ... shall be the Closing Date.” (PSA p. 55).

Revelation (PSA): REMIC timing is locked to Closing; later changes must honor the PSA’s substitution regime with Opinion of Counsel. A 2010 assignment is not that regime.

Schedules & Exhibits index page — roman numeral iv

Quote (locator): “SCHEDULES ... EXHIBITS” (Index page, roman iv).

Revelation (PSA): This points the Court to the PSA’s Delay Delivery Certification (Ex. G-2) and Final Certification (Ex. H) referenced by § 2.02—proof the PSA polices timing contemporaneously, not years later.